

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – SEPTEMBER 22, 2004**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 5:45 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Sellers, Tate and Chairperson/Mayor Kennedy
Late: Agency/Council Members Carr (arrived at 6:04 p.m.) and Chang (arrived at 6:55 p.m.)

DECLARATION OF POSTING OF AGENDA

Agency Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council Action

1. CONDUCT INTERVIEW AND APPOINT TO FILL A VACANCY ON THE MOBILE HOME RENT COMMISSION.

The Council interviewed Eric Gould, applicant, interested in serving on the Mobile Home Rent Commission.

Mayor Kennedy informed Mr. Gould that the Council would consider his application to serve on the Mobile Home Rent Commission and thanked him for his interest in wishing to serve the City and the community on this Commission.

Council/Agency Member Carr entered and took his seat on the dais.

Action: *No action taken.*

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

Mayor/Chairman Kennedy announced the below listed closed session items.

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| | 1. |
| | <u>CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION</u> |
| Authority: | Government Code Sections 54956.9(b) & (c) |
| Number of Potential Cases: | 2 |

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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|---|----------------------------|
| Authority | Government Code 54957 |
| Public Employee Performance Evaluation: | City Manager |
| Attendees: | City Council, City Manager |

3.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

| | |
|---|-----------------------------|
| Authority | Government Code 54957 |
| Public Employee Performance Evaluation: | City Attorney |
| Attendees: | City Council, City Attorney |

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

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|--------------|--|
| Authority: | Pursuant to Government Code 54956.9(a) |
| Case Name: | City of Morgan Hill v. Howard Vierra |
| Case Number: | Santa Clara County Superior Court, Case No. 1-04-CV-026723 |

Council/Agency Member Chang was not in attendance during closed sessions.

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Chairman/Mayor Kennedy adjourned the meeting to Closed Session at 6:05 p.m.

RECONVENE

Agency/Council Member Chang entered and was seated.

Chairman/Mayor Kennedy reconvened the meeting at 7:10 p.m.

CLOSED SESSION ANNOUNCEMENT

Chairman/Mayor Kennedy indicated that the Redevelopment Agency Board/City Council continued the closed sessions to the conclusion of the regular meeting agenda.

Acting Agency Counsel/City Attorney McClure announced that there was nothing to report out of closed session at this time.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

On behalf of the City of Morgan Hill, Mayor Kennedy presented a Certificate of Recognition to Ms. Loritta Johnson, in honor of her receiving the Santa Clara County Office of Education Teacher Recognition Award.

COMMENDATION

Mayor Kennedy presented a Certificate of Commendation to Police Officer David Ray for his act of heroism in pursuit of a suspect attempting to cash a forged check with false identification. The suspect fled the scene and unsuccessfully attempted to carjack a passing vehicle. While risking his own safety, Officer Ray pursued the suspect and successfully/heroically gained control of the suspect while chasing him across several lanes of heavy traffic. Officer Ray averted a potentially dangerous situation involving several citizens, theft of property, and injury to himself and others, by handling this event in an extremely professional manner.

Interim Chief of Police Cumming informed the Council that the potential carjack victim knows Santa Clara County Board of Supervisor Pete McHugh and told him of Officer Ray's act of heroism. Supervisor Pete McHugh also wrote up a commendation for Officer Ray to which he read into the record.

CITY COUNCIL REPORT

Council Member Chang announced that she would be on a 4-6 week medical leave of absence and excused herself from the remainder of the meeting.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda. No comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Approved** Consent Calendar Item 2 as follows:*

2. **AUGUST 2004 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**
 Action: **Accepted** and **Filed** Report.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 3-7, as follows:*

3. **AUGUST 2004 FINANCE & INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

4. **FINAL MAP APPROVAL FOR MORGAN STATION (TRACT 9585)**

Action: *1) **Approved** the Final Map, Including the Abandonment of an Excess Portion of East Central Avenue; 2) **Approved** the Subdivision Agreement and Improvement Plans; 3) **Authorized** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 4) **Authorized** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

5. **INDOOR RECREATION CENTER – APPROVE CONSULTANT AGREEMENT FOR PHASE I CONSTRUCTION MANAGEMENT SERVICES**

Action: ***Authorized** the City Manager to Execute a Consultant Agreement with Nova Partners, Inc. for a Total Fee not to exceed \$114,800, Subject to City Attorney Review and Approval.*

6. **REJECTION OF BIDS FOR BOYS RANCH RESERVOIR #3**

Action: ***Rejected** the Bids Received on September 8, 2004 for the Construction of the Boy's Ranch Reservoir #3 and **Authorized** Staff to Re-bid the Project.*

7. **JOINT SPECIAL CITY COUNCIL, SPECIAL PLANNING COMMISSION, AND SPECIAL ARCHITECTURAL REVIEW BOARD MEETING MINUTES OF SEPTEMBER 8, 2004**

Action: ***Approved** the Minutes as Written.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: *On a motion by Agency/Council Member Tate and seconded by Vice-chair/Mayor Pro Tempore Sellers, the Agency Board/City Council, on a 4-0 vote with Agency/Council Member Chang absent, **Approved** Consent Calendar Items 8 and 9 as follows:*

8. **CARRYOVER OF ENCUMBRANCES FROM FISCAL YEAR 2003-2004**

Action: ***Received** and **Filed** Report.*

9. **FINAL FISCAL YEAR 2003-2004 BUDGET ADJUSTMENTS**

Action: *Approved the Proposed Final Budget Adjustments for Fiscal Year 2003-2004.*

Executive Director/City Manager Tewes informed the Agency/Council that it adopted a policy whereby public hearings are considered on or after 7:30 p.m. He therefore recommended that the Council consider agenda item 12 at this time.

Redevelopment Agency Action

OTHER BUSINESS:

12. **EXTENSION OF EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (ERN) WITH EL TORO BREWING.**

Director of Business Assistance and Housing Services Toy presented the staff report, informing the Council that the developer is requesting that the Agency Board extend the initial extension of October 12 to November 30, 2004 to allow him additional time to secure financing. He indicated that the revised agreement provides for a 60-day extension if the lender needs additional time to approve the El Toro Brewing loan. He said that closing on the property is approximately 60-90 days longer than anticipated. However, staff believes that El Toro has made good faith efforts to have ARB approval and that they are close to securing their financing. He indicated that the Economic Development Committee members (Agency/Council Members Carr and Tate) are recommending approval of the extension.

Vice-chairman Sellers stated that he was please to see that closing of escrow and the approval of the construction loan would occur simultaneous. He did not know what would happen should the property close escrow and the construction loan falls through.

Mr. Toy said that it would make sense to have the bank fund the loan at the same time that escrow closes as this would ensure that the developer would have their construction financing in place.

Vice-chairman Sellers recommended that the terms of the agreement reflect that the bank loan and close of escrow should coincide with each other.

Chairman Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency Member Carr and seconded by Agency Member Tate, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Authorized** the Executive Director to Prepare, Negotiate, and Execute an Amendment to the ERN with El Toro Brewing to Extend the ERN Deadline to November 30, 2004, with Provisions to Allow for a 60-Day Extension Subject to Specific Conditions as Detailed in the Revised Schedule of Performance.*

City Council Action

PUBLIC HEARINGS:

10. DEVELOPMENT AGREEMENT FOR DAN GAMEL, INC. – *Ordinance No. 1698, New Series*

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the development agreement memorializes the significant benefits to the City and the developer. He highlighted the key business terms of the development agreement. He indicated that a Council subcommittee, consisting of Mayor Kennedy and Council Member Tate, have worked with staff to craft and negotiate the development agreement and are recommending its approval. He informed the Council that Jim Patterson with Dan Gamel RV was in attendance to answer any questions the Council may have.

Council Member Carr requested that staff explain how the \$20.7 million base amount was calculated. He inquired as to the amount of sales taxes that were generated last fiscal year.

Mr. Toy said that in the previous agreement, the City established a base line amount and that staff carried that amount into this agreement. In the last year of the ten year agreement (Fiscal Year 02-03), it established the base line of approximately \$200,000. Staff applied a CPI to it and came up with a new baseline figure of \$20.7 million and that staff carried over the concept of increasing it by the CPI each year. He clarified that Dan Gamel's RV exceeded \$20 million in sales in Fiscal Year 2002-03. He informed the Council that sales tax information is confidential but stated that Dan Gamel exceeded the baseline amount and that they received a rebate.

Council Member Carr noted that the baseline of the agreement did not start at the current level of sales but at the ending point of the last agreement, plus CPI.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Carr inquired whether the Council Economic Development subcommittee felt that the City was challenging Dan Gamel to meet a certain threshold or was the City falling back to where it was in the last agreement.

Council Member Tate felt that henceforward, the City would be challenging Dan Gamel to meet the phasing or the other challenging thresholds. He stated that he was not sure whether the subcommittee was challenging Dan Gamel on the base line. The Subcommittee agreed to keep the baseline going from where the agreement terminated.

Mayor Kennedy stated that the subcommittee used the baseline as a starting point. He indicated that this was not an easy process and that it was a difficult journey to get to this point. The subcommittee wanted to ensure that the City did not lose a valuable business in the community. Therefore, there was a lot of give and take in the negotiation of the agreement.

City Manager Tewes stated that the agreement that was entered into 12 years ago identified a threshold and that it was for a straight 50% sales tax sharing of every dollar. He said that this agreement was structured with an attempt to give an incentive to Dan Gamel to expand in operations and increase sales. Therefore, the schedule that is shown in the agreement is not 50% of the lower levels. The agreement only achieves more than 50% at high levels of sale.

Mayor Kennedy said that the good news is that Dan Gamel's RV has been doing quite well and that their sales have been excellent. He said that the potential for growth is good.

Mayor Pro Tempore Sellers noted that the City is looking at spending money to move the house associated with item 11 to a place where activity will be taking place soon. He inquired whether the City would be incurring additional costs in moving the house again in the near future.

Mr. Toy stated that staff proposes to move the house to its permanent location on the site which would be close to the existing pump house of the soccer complex, its permanent location as part of future development.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Waived** the reading in full of Ordinance No. 1698, New Series.*

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1698, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT WITH DAN GAMEL, INC. FOR THE EXPANSION OF DAN GAMEL'S MORGAN HILL RECREATIONAL VEHICLE (RV) CENTER**, by the following roll call vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Chang.*

Redevelopment Agency Action

OTHER BUSINESS:

11. AWARD CONTRACT TO ABCO CONSTRUCTION TO MOVE THE HISTORIC LA MALFA HOUSE.

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that the house was deemed to be a historical building by a third party, a historical consultant retained by the City. He stated that staff intends to store the house on the soccer complex site for future development as a sports complex and move it to its permanent location.

Chairman Kennedy indicated that there are a few other historical significant items on the site such as tractors and cars used for hauling crates of prunes and apricots from the dehydrator part of the facility. These are unique agricultural handling equipment that are old in nature that will be saved.

Mr. Toy informed the Agency Board that the funds to move the house come will from the Redevelopment Agency Fund (80% monies).

Vice-chairman Sellers felt that it would be important to know the historical significance of the house, who resided in the house and other attributes for making the structure significant.

Mr. Toy said that staff has the report prepared for the house and stated that the house is considered to be of historical significance because the La Malfa family lived in the house and were influential in this area when it came to vintners and agriculture type industry. He indicated that the house was built in 1906. Therefore, the combination of the age of the home as well as the historical significance of the family and the winery lent itself to the historic fabric of Morgan Hill. Thus, the reason the house was deemed significant.

Chairman Kennedy said that the house has a lot of architectural features that are in good shape and unique. He was pleased that the house was being saved.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board, on a 4-0 vote with Agency Member Chang absent, **Awarded** \$30,000 Construction Contract to ABCO Construction for the La Malfa House Move, subject to Review and Approval by Agency Counsel*

Action: *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board, on a 4-04 vote with Agency Member Chang absent, **Authorized** the Expenditure of Contingency Funds Not to Exceed \$6,000.*

City Council Action

OTHER BUSINESS:

13. WATER RATES

Finance Director Dilles presented the staff report, indicating that previously, the City Council adopted a series of water rate increases and perchlorate surcharge increases over the next several years. At the time the Council adopted these increases, the Finance Director was required to return to the Council by the September prior to each January increase and report on the necessity of the upcoming increases. He stated that the City has a scheduled 2% water rate increase in January 2005 along with a scheduled 5% surcharge increase. He indicated that the proposed water rates assume some recovery costs from Olin Corporation. He informed the Council that it will be necessary to increase the surcharge from 5% to 10% and to increase water rates another 2% in January 2005 in order to stay close to the funding that is needed to pay for projected costs.

City Manager Tewes informed the Council that the Tennant Avenue well is not yet in operation as the City is awaiting license approval from the California State Department of Health Services.

Council Member Tate noted that the City has perchlorate costs in the amount of \$3.5 million and has a recovery from Olin Corporation of \$1.3 million. This results in a \$2.2 million deficit that the analysis shows the rate payers will have to pay in surcharges. He stated that the analysis does not show that the City will attempt to recover this cost from Olin Corporation.

City Manager Tewes said that it will be the City's intention to seek reimbursement from Olin Corporation. He said that the City has received some reimbursements from Olin Corporation and that it is included in the actuals for 2003-04. He said that the City has an identifiable cost for which the City will be making a claim for the second emergency well. He stated that the technical and operating costs are not likely to be recovered until such time as there is subsequent legal action and that staff did not know when to insert these costs. He stated that it was the Council's direction that staff seeks recovery of all perchlorate related costs and that the rate payers should not bare the burden of the contamination of the groundwater by Olin Corporation.

Council Member Carr said that if and when the City receives additional money from Olin Corporation or if in fact the bill sponsored by Congressman Pombo passes, these dollars will come to the City. These monies will allow the City to balance against the perchlorate surcharge that the rate payers are paying.

Finance Director Dilles stated that the resolution before the Council requires that this money be credited back to the rate payers and can only be used for perchlorate purposes.

City Manager Tewes stated that Congressman Pombo's bill would not provide any direct benefit to Morgan Hill's rate payers but would provide for future remediation of the groundwater. He clarified that the Bill would not provide for repayment of past costs.

Finance Director Dilles said that the reason the City will be \$300,000 short of its target in June 2007 is because there is an assumption that the Santa Clara Valley Water District will continue to substantially increase the City's pump tax. He stated that he and other staff members are working with the Water District on their Retailers Committee trying to understand the components of their costs and provide input. He said that the Water District is proposing significant increases to both north and south county that they believe are necessary to operate the Water District. Without these projected increases, the City would not be seeing this particular shortfall.

Mayor Kennedy inquired whether the City has noticed any reduction in water usage due to conservation efforts or the cooler weather.

City Manager Tewes said that the City's daily peak was shorter this year than it was last year. He said that the peak versus the City's capacity determines whether or not it needs to engage in water emergency actions. Because of the cooler summer, the peak daily use has been less this year than in the prior year. However, for total water consumption, the City's water system is trending toward an increase in total water consumption this year as compared to last year. He clarified that the peak is lower but that the total consumption is up.

Mayor Pro Tempore Sellers expressed concern with the 100% water rate increase in four years. He said that if the City does not increase its perchlorate surcharges and Olin Corporation does not reimburse the City, the City would end up with a funding balance of zero within three years.

Council Member Carr inquired whether the capital cost associated with recycled tertiary water was too great for Morgan Hill to try to begin this conversation as a way of reducing water usage.

City Manager Tewes indicated that the City's general plan requires that the City consider the use of recycled tertiary water. He said that as the South County Regional Wastewater Authority (SCRWA) considers its plans for expansion and the disposal of treated wastewater, there is the potential for pumping it back up hill which added to the costs. He said that there has to be enough usage of the tertiary treated water in parks and large users to make it viable.

Director of Public Works Ashcraft informed the Council that SCRWA and the Water District's work plan this year includes a report on the long term master plan for recycled water use. He indicated that Gilroy has been receiving treated wastewater for various usages (e.g., golf courses and parks) for some years. He said that this plan projects some costs that may be cost effective for Morgan Hill to receive some recycled wastewater. One instance would be to pump recycled wastewater for 10 miles. However, the cost of this would be exorbitant and that it would be some time before this can become cost effective. Another possibility would be to construct a separate stand alone tertiary treated scalping plant in Morgan Hill using this water for irrigation. However, this alternative would need several dedicated customers who would use the tertiary water to irrigate. He indicated that the City does not have these customers yet. He stated that the City's parks are diversely located throughout the City and that it would be difficult to plumb these into one irrigation system. He stated that there is a golf course in the south and eastern part of town that could benefit from the recycled water and that this is mentioned in the plan. He indicated that the plan would be coming before SCRWA within the next six months and that following SCRWA's review; the two councils will get to spend more time on this issue.

Mayor Kennedy inquired whether it would make sense for the City to conduct a local study of the scalping plant in conjunction with the Math Institute golf course as the user of recycled water (e.g., feasibility study).

Director of Public Works Ashcraft indicated that a feasibility study is being undertaken by the Water District with a consultant in a macro review. When the study comes before the Council, the City might decide to branch out further and look into this area in more depth. He felt that it made sense to wait for the conclusion of the SCRWA study in six months. At that time, the City might get into more detail if the Council felt that it would be cost effective. He indicated that the study includes looking at a scalping study in Morgan Hill. It was his belief that the study includes a possible user of recycled water located near the eastern side of Morgan Hill.

Mayor Kennedy requested that staff provide the Council with an update on the study sometime in the future.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *By consensus, the City Council **Accepted** and **Filed** the Report.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

RECONVENE TO CLOSED SESSION

Chairman/Mayor Kennedy indicated that the Council would reconvene to Closed Session to discuss the items as listed on the agenda.

Acting Agency Counsel/City Attorney McClure indicated that anticipated litigation, personal matters relating to the City Attorney, and the performance evaluation of the City Manger would be discussed in closed session.

Chairman/Mayor Kennedy reconvened the closed session at 8:02 p.m.

RECONVENE

Chairman/Mayor Kennedy reconvened the meeting at 8:59 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel McClure announced that under Closed Session Item 1, Anticipated Litigation, it was reported that the Council approved a settlement of a claim made by the City Attorney against the City of Morgan Hill. The City Council authorized the City Manager to execute the settlement agreement and its release, once it has been approved by City Attorney Helene Leichter. No other reportable actions were taken in closed session. Council/Agency Member Chang was not in present during closed session discussions.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 9:00 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, AGENCY SECRETARY/CITY CLERK